

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUSTIN LAVERN HILL,

Defendant-Appellant.

UNPUBLISHED

December 13, 2011

No. 300539

Wayne Circuit Court

LC No. 10-005955-FH

Before: MURPHY, C.J., and JANSEN and OWENS, JJ.

PER CURIAM.

Defendant appeals by right his bench-trial convictions of possession with intent to deliver ecstasy, MCL 333.7401(2)(b)(i), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), possession of a firearm by a felon (felon-in-possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 78 months to 20 years for his ecstasy conviction, 1 to 4 years for his marijuana conviction, and 1 to 5 years for his felon-in-possession conviction. He was also sentenced to a consecutive prison term of two years for his felony-firearm conviction. We affirm.

Defendant argues that the prosecution presented insufficient evidence to support his convictions. In particular, he argues that the prosecution presented insufficient evidence to allow the circuit court to find beyond a reasonable doubt that he possessed the drugs and firearm at issue in this case. We disagree.

When reviewing a claim of insufficient evidence in a criminal case, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found beyond a reasonable doubt that all essential elements of the crime were established. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). We will not interfere with the trier of fact's role in determining the weight of the evidence or the credibility of the witnesses. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). Circumstantial evidence and reasonable inferences arising therefrom can constitute satisfactory proof of the elements of a crime. *Id.* All conflicts in the evidence must be resolved in favor of the prosecution. *Id.*

To prove that a defendant possessed a controlled substance with intent to deliver it, the prosecution must prove: (1) that the substance was a controlled substance, (2) the weight of the

substance, (3) that the defendant was not authorized to possess the substance, and (4) that the defendant knowingly possessed the substance with the intent to deliver it. The last element has two components, possession and intent. *Wolfe*, 440 Mich at 516-517, 519. The parties stipulated that the substances found in the home were ecstasy and marijuana.

Defendant argues that the prosecution did not sufficiently prove the element of possession. A person need not have actual physical possession of a controlled substance to be guilty of possessing it. *Id.* at 519-520. Possession may be either actual or constructive, and possession may occur even if the defendant is not the owner of the substance. *Id.* To prove constructive possession, the prosecution must show that the defendant knew the character of the substance. *People v McGhee*, 268 Mich App 600, 610; 709 NW2d 595 (2005). However, as defendant correctly points out, mere presence is insufficient to prove constructive possession beyond a reasonable doubt. *Wolfe*, 440 Mich at 520.

Defendant argues that this is a case of mere presence. But he fails to take into account that the prosecution presented other, independent evidence to support its theory of constructive possession. Police officers testified that they found defendant approximately eight feet from a table containing 87 ecstasy pills and 6.2 grams of marijuana packaged in individual vials. The police officers further testified that they recovered a college identification card bearing defendant's name and picture from the same table. Finally, although the police officers did not find any proof of residency linked to defendant, they testified that defendant asked them, "What made you all hit my house?" The circuit court found the police officers to be credible witnesses and, as noted previously, we will not interfere with that determination. *Kanaan*, 278 Mich App at 619. Viewing the evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence presented at trial to prove beyond a reasonable doubt that defendant constructively possessed the ecstasy and marijuana.

The prosecution also sufficiently proved that defendant possessed the drugs with the intent to deliver them. The prosecution was required to show that defendant had a specific intent to deliver the drugs. *McGhee*, 268 Mich App at 610. Intent to deliver may be inferred from the quantity of drugs possessed by the defendant and the manner in which the drugs were packaged. *Id.* at 611; *People v Fetterley*, 229 Mich App 511, 518; 583 NW2d 199 (1998). Minimal circumstantial evidence is all that is necessary. *Id.* at 517-518. In the present case, the packaging of the marijuana in individual vials and the quantity of the ecstasy pills indicated that each substance was intended for sale or distribution. The scale that was found next to the drugs and defendant's identification card also strongly suggested that the substances were for sale. *Id.* at 518. We conclude that the prosecution presented sufficient circumstantial evidence to prove beyond a reasonable doubt that defendant possessed the intent to deliver the drugs in question.

The prosecution also presented sufficient evidence to convict defendant of felony-firearm and felon-in-possession. To convict a defendant of felony-firearm, the prosecution must prove that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession of a firearm can be actual or constructive, joint or exclusive. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). "Possession of a firearm need only be constructive to establish the element of possession." *Id.* With the same evidence that was used to prove constructive possession of the controlled substances, the prosecution also proved that defendant constructively possessed

the firearm found on the dining room table. See *People v Burgenmeyer*, 461 Mich 431, 437-439; 606 NW2d 645 (2000); see also *Hill*, 433 Mich at 470. This evidence was sufficient to show that defendant possessed a firearm during the commission of a felony (i.e., possession with intent to deliver the controlled substances), see MCL 750.227b, and that defendant was a felon in possession of a firearm,¹ see MCL 750.224f.

For the foregoing reasons, we conclude that the prosecution presented sufficient evidence to support defendant's convictions of possession with intent to deliver ecstasy, possession with intent to deliver marijuana, felony-firearm, and felon-in-possession.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Donald S. Owens

¹ The parties had already stipulated that defendant was ineligible to possess a firearm because of his previous felony convictions.